

**Before the Federal Communications Commission  
Washington, D.C. 20554**

In re First Round Election of	)	
	)	
Paxson Spokane License, Inc.	)	MB Docket No. 03-15
Station WGPX-TV, Spokane, WA	)	
Facility No. 81694	)	FCC File No. BFRECT-20050210AWF
	)	

To: Chief, Media Bureau

**Comments and Objection of Spokane Television, Inc. and Apple Valley Broadcasting, Inc.  
to First Round Channel Election of Paxson Spokane License, Inc.**

Spokane Television, Inc., licensee of KXLY-TV in Spokane, Washington, and Apple Valley Broadcasting, Inc., licensee of KAPP-TV, Yakima, WA and KVEW-TV, Kennewick, WA (together, the "Joint Commenters"), by counsel and pursuant to the procedures outlined in *Public Notice* (DA 05-519),<sup>1</sup> hereby object to the above-captioned FCC Form 382 (Digital Channel Election Form, First Round Election) filed by Paxson Spokane License, Inc. ("Paxson"). In its Form 382,<sup>2</sup> Paxson certifies that "has entered into a Negotiated Channel Election Arrangement" with 18 area DTV licensees with respect to Paxson's efforts to elect its preferred DTV Channel 43. In fact, the Joint Commenters did not approve such an arrangement, and Paxson's false characterization represents bad-faith strategic behavior to obtain an unjustified advantage in the channel election process.

FCC Form 382 provided broadcast licensees with one in-core channel (such as Paxson for station KGPX) one of three election options. A licensee could (1) elect a channel from its "currently assigned" (DTV or NTSC) channels, (2) elect a channel based on a Negotiated Channel Election Arrangement (subject to FCC approval, with an alternate in-core channel

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<sup>1</sup> *DTV Channel Election Issues – Proposed Negotiated Channel Election Arrangements and Procedures for Filing Associated Pleadings*, DA 05-519 (rel. March 1, 2005).

<sup>2</sup> A copy of the Form 382 appears at Exhibit A.

designated), or (3) make no election, thus opting to participate in the second round of elections. In Paxson's Form 382, Paxson selected Option B in response to Question 1, thereby certifying that Paxson "has entered into a Negotiated Channel Election Arrangement and, accordingly, makes the following channel election [Channel 43], subject to Commission Approval." In Schedule A of Form 382, Paxson certified that it "has entered into a negotiated channel election arrangement with the following licensee(s)/permittee(s)," including Spokane Television, Inc. and Apple Valley Broadcasting, Inc.

In Section III of Form 382, Paxson's Secretary, William L. Watson submitted a certification that provided, in relevant part:

I certify that the statements in this form are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations.<sup>3</sup>

Yet with respect to the Joint Commenters, Paxson's statement that it had entered into a negotiated channel arrangement is a material misrepresentation. Neither Spokane Television, Inc. nor Apple Valley Broadcasting, Inc. entered into a negotiated channel election arrangement with Paxson. On January 13, 2005, Paxson sent letters to Steve Herling, Vice President and General Manager of Spokane Television, Inc. and Darrell Blue, Vice President and General Manager of Apple Valley Broadcasting, Inc. requesting that Mr. Herling and Mr. Blue execute an "Acknowledgement of Channel Election" indicating that there was "no objection" to KGPM's proposal to operate on Channel 43 post-transition.<sup>4</sup> The letters further stated that "you may take no action and we will presume there is no objection."

Paxson falsely characterizes that Spokane Television, Inc. and Apple Valley Broadcasting, Inc. entered into a negotiated channel arrangement. In fact, Mr. Blue returned the

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<sup>3</sup> See Exhibit A.

<sup>4</sup> See copies of letters at Exhibit B.

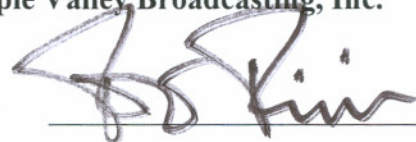
letter to Paxson and indicated that Apple Valley Broadcasting, Inc. did have an objection to the election of Channel 43.<sup>5</sup> Mr. Herling never responded to the Paxson letter. Accordingly, there was never a “negotiation” or agreement involving KGPX’s desire to obtain post-transition operations on Channel 43, nor the required mutual assent or exchange of consideration necessary to form an agreement under black-letter contract law. Paxson should not be permitted to leverage these flimsy “negative option” letters into an advantageous channel election when, absent an agreement, Paxson would only have been permitted to select its analog channel (34) or to make no first-round election at all. To find otherwise would merely reward such bad-faith strategic behavior.

For these reasons, the Joint Commenters respectfully requests that the FCC reject Paxson’s election of Channel 43 and instead require that Paxson operate its post-transition DTV facility for KGPX on its current analog channel, Channel 34.

Respectfully submitted,

**Spokane Television, Inc.**  
**Apple Valley Broadcasting, Inc.**

By: \_\_\_\_\_



Robert J. Rini  
Jonathan E. Allen  
Rini Coran, PC  
1501 M Street, NW, Suite 1150  
Washington, DC 20005  
202-296-2007  
*Their Attorneys*

March 15, 2005

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<sup>5</sup> See Exhibit C.

# **Exhibit A**



Federal Communications Commission Washington, D.C. 20554  <b>FCC 382</b>	Approved by OMB 3060-1076 (October 2004)	FOR FCC USE ONLY
<b>DIGITAL CHANNEL ELECTION FORM          FIRST ROUND ELECTION</b>  <b>Must Be Filed by February 10, 2005</b>  Please Read INSTRUCTIONS Before Completing This Form		FOR COMMISSION USE ONLY FILE NO. BFRECT - 20050210AWF

**Section I - General Information**

<b>Licensee/Permittee Information</b>			
1.	Legal Name of the Licensee/Permittee PAXSON SPOKANE LICENSE, INC.		
	Mailing Address 601 CLEARWATER PARK ROAD		
	City WEST PALM BEACH	State or Country (if foreign address) FL	ZIP Code 33401 - 6233
	Telephone Number (include area code) 5616824131	E-Mail Address (if available)	
<b>Station / Facility Information</b>			
2.	FCC Registration Number 0003727096		
	Call Sign KGPX	Facility ID Number 81694	
	Community of License: City SPOKANE	State WA	
3.	<b>Currently Assigned Channels:</b>		
	a. DTV Channel: <input checked="" type="checkbox"/> Not Applicable		
	b. NTSC Channel: 34 <input type="checkbox"/> Not Applicable		
<b>Contact Information (if different from licensee/permittee)</b>			
4.	Contact Representative WILLIAM L. WATSON	Firm or Company Name PAXSON COMMUNICATIONS CORPORATION	
	Mailing Address 601 CLEARWATER PARK ROAD		
	City WEST PALM BEACH	State or Country (if foreign address) FL	ZIP Code 33401 - 6233
	Telephone Number (include area code) 5616824206	E-Mail Address (if available) BILLWATSON@PAXSON.COM	
<b>Purpose of Form:</b>			
5.	The purpose of the channel election process is for television broadcast licensees and permittees to select an in-core channel (i.e., channels 2-51) for their post-transition DTV operation. The purpose of the First Round Election Form is for all licensees/permittees currently assigned at least one in-core channel to make a channel election. <b>(SELECT ONE)</b>		
	a. <input checked="" type="radio"/> Channel Election b. <input type="radio"/> Amendment		

**Section II - CHANNEL ELECTION**

All broadcast television licensees and permittees participating in the digital channel election process are required to file a channel election form. Licensees/Permittees that do not submit a channel election form by the deadline on page one will be assigned a channel by the Commission for post-transition DTV operation.

**First Round Channel Election:**

<b>1. Channel Election: (SELECT ONE)</b>	
<p>a. <input type="radio"/> Licensee/permittee makes the following channel election from its currently assigned (DTV or NTSC) channels</p> <p>NOTE: Post-transition rights to other in-core channel(s) currently assigned to the licensee/permittee for this station are released upon licensee/permittee receipt of a Commission tentative channel designation.</p>	<p>Indicate in-core channel number for final DTV operation here.</p>
<p>b. <input checked="" type="radio"/> Licensee/permittee has entered into a Negotiated Channel Election Arrangement and, accordingly, makes the following channel election, subject to Commission approval:</p> <p><b>Licensee/permittee must complete Schedule A.</b></p> <p>If the Commission does not approve licensee/permittee's negotiated channel election arrangement, licensee/permittee makes the following channel election from its currently assigned (DTV or NTSC) channels:</p> <p>NOTE: Post-transition rights to other in-core channel(s) currently assigned to the licensee/permittee for this station are released upon licensee/permittee receipt of a Commission tentative channel designation.</p>	<p>Indicate in-core channel number for final DTV operation here. 43</p> <p>Indicate alternate in-core channel number for final DTV operation here. 34</p>
<p>c. <input type="radio"/> Licensee/permittee makes no channel election; accordingly, licensee/permittee elects to participate in the second round of elections. This option may be selected only by licensees/permittees with only one in-core channel or with two low VHF channels (2-6).</p> <p>NOTE: Post-transition rights to in-core channel(s) currently assigned to the licensee/permittee for this station are released.</p>	
<b>International Coordination.</b>	
<p>2 Is the licensee/permittee electing a channel that is subject to a pending international coordination issue?</p> <p>If yes, licensee/permittee must attach an explanation as an Exhibit to this form.</p>	<p><input type="radio"/> Yes <input checked="" type="radio"/> No</p> <p>[Exhibit 1]</p>

**Section III**

I certify that the statements in this form are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations. I hereby waive any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and request an authorization in accordance with this election form. (See Section 304 of the Communications Act of 1934, as amended.)

Typed or Printed Name of Person Signing WILLIAM L. WATSON	Typed or Printed Title of Person Signing SECRETARY
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Signature	Date 02/10/2005
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WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

## ELECTION FORM SCHEDULE A

### SCHEDULE FOR NEGOTIATED CHANNEL ELECTION

Licensees/permittees involved in a negotiated channel election arrangement must complete this Schedule. The purpose of this Schedule is for licensees/permittees to provide details concerning their negotiated channel election arrangements.

#### 1. [Station List]

Licensee/permittee has entered into a negotiated channel election arrangement with the following licensee(s)/permittee(s):  
(provide name(s) and call sign(s) as necessary)

Licensee/Permittee Name	Call Sign	Facility ID No.
KING BROADCASTING CORP.	KREM-TV	34868

Licensee/Permittee Name	Call Sign	Facility ID No.
SPOKANE TELEVISION, INC.	KXLY-TV	61978

Licensee/Permittee Name	Call Sign	Facility ID No.
KHQ INCORPORATED	KHQ-TV	34537

Licensee/Permittee Name	Call Sign	Facility ID No.
MOUNTAIN LICENSES, LP	KAYU-TV	58684

Licensee/Permittee Name	Call Sign	Facility ID No.
SPOKANE SCHOOL DISTRICT #81	KSPS-TV	61956

Licensee/Permittee Name	Call Sign	Facility ID No.
WASHINGTON STATE UNIVERSITY	KWSU-TV	71024

Licensee/Permittee Name	Call Sign	Facility ID No.
PULLMAN BROADCASTING, INC.	KQUP	78921

Licensee/Permittee Name	Call Sign	Facility ID No.
FISHER BROADCASTING - WASHINGTON TV, L.L.C.	KLEW-TV	56032

Licensee/Permittee Name	Call Sign	Facility ID No.

STATE BOARD OF EDUCATION	KUID-TV	62382
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Licensee/Permittee Name	Call Sign	Facility ID No.
STATE BOARD OF EDUCATION, STATE OF IDAHO	KCDT	62424

Licensee/Permittee Name	Call Sign	Facility ID No.
FISHER BROADCASTING - PORTLAND TV, L.L.C.	KATU	21649

Licensee/Permittee Name	Call Sign	Facility ID No.
KING BROADCASTING COMPANY	KGW	34874

Licensee/Permittee Name	Call Sign	Facility ID No.
NATIONAL MINORITY TV, INC.	KNMT	47707

Licensee/Permittee Name	Call Sign	Facility ID No.
EMMIS TELEVISION LICENSEE, LLC	KOIN	35380

Licensee/Permittee Name	Call Sign	Facility ID No.
APPLE VALLEY BROADCASTING, INC.	KVEW	2495

Licensee/Permittee Name	Call Sign	Facility ID No.
NORTH PACIFIC INTERNATIONAL TELEVISION, INC.	KHCV	49264

Licensee/Permittee Name	Call Sign	Facility ID No.
PUGET SOUND EDUCATIONAL TV, INC.	KWDK	35419

Licensee/Permittee Name	Call Sign	Facility ID No.
KSKN TELEVISION, INC.	KSKN	35606

Licensee/Permittee Name	Call Sign	Facility ID No.
KCTS TELEVISION	KCTS-TV	33749

2. Licensee/permittee must provide a copy of the Negotiated Channel Election Arrangement and/or engineering information to the FCC upon request.

#### Exhibits



# Exhibit B

January 13, 2005

VIA FEDERAL EXPRESS

Mr. Darrell Blue  
Vice President & General Manager  
KVEW(TV)  
601 N. Edison Kennewick, WA 99336

Re: KGPX-DT Channel Election

Dear Mr. Blue:

As you may know, Paxson Spokane License, Inc. ("Paxson") is the FCC licensee of station KGPX(TV) (Spokane, Washington). KGPX(TV) broadcasts on NTSC Channel 34 but was not assigned a paired DTV channel. In the present round of the channel election process, Paxson wishes to elect Channel 43 for post-transition operation of the station. Election of an unassigned channel at this stage is permissible only pursuant to a negotiated channel arrangement. For KGPX(TV), Paxson does not seek use of a channel assigned to a local station. The FCC has said it will review the station's election for anti-competitive effects.

Accordingly, we hereby request that if you have an objection to KGPX(TV)'s election of Channel 43, please notify the undersigned using the attached form and returning it to me by fax or e-mail at your earliest convenience – but no later than Monday, January 24, 2005. Conversely, if you have no objection, we would appreciate it if you could memorialize this by indicating so on the enclosed form and returning it to me. Alternatively, you may take no action and we will presume there is no objection.

If you have any questions or concerns, please feel free to contact me. Thank you for your consideration.

Sincerely,

William Watson

William L. Watson  
Secretary

**Acknowledgement of Channel Election**

KGPX (TV) broadcasts on NTSC Channel 34 but was not assigned a paired DTV channel. Paxson believes post-transition operation of KGPX(TV) on Channel 43 will be aggregately preferable in terms of impact on other television stations. Election of an unassigned channel at this stage is permissible only pursuant to a negotiated channel arrangement. Because Paxson wishes to elect a channel unassigned to a local station, it does not anticipate this arrangement to have anti-competitive effects, but the FCC has said it will review stations' elections for such effects. Accordingly, by signing below, [ ] hereby acknowledges the foregoing and confirms the following:

☐ [ ] has no objection to the election of Channel 43 by KGPX(TV).

☐ [ ] objects to the election of Channel 43 by KGPX(TV) for the following reasons:

This acknowledgment is effective as of the date hereof.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Title (please print)

\_\_\_\_\_  
Date



January 13, 2005

VIA FEDERAL EXPRESS

Mr. Steve Herling  
General Manager  
KXLY-TV  
500 West Boone Avenue  
Spokane, WA 99201

Re: KGPX-DT Channel Election

Dear Mr. Herling:

As you may know, Paxson Spokane License, Inc. ("Paxson") is the FCC licensee of station KGPX(TV) (Spokane, Washington). KGPX(TV) broadcasts on NTSC Channel 34 but was not assigned a paired DTV channel. In the present round of the channel election process, Paxson wishes to elect Channel 43 for post-transition operation of the station. Election of an unassigned channel at this stage is permissible only pursuant to a negotiated channel arrangement. For KGPX(TV), Paxson does not seek use of a channel assigned to a local station. The FCC has said it will review the station's election for anti-competitive effects.

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If you have any questions or concerns, please feel free to contact me. Thank you for your consideration.

Sincerely,

William W. B. W.

William L. Watson  
Secretary

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KGPX (TV) broadcasts on NTSC Channel 34 but was not assigned a paired DTV channel. Paxson believes post-transition operation of KGPX(TV) on Channel 43 will be aggregately preferable in terms of impact on other television stations. Election of an unassigned channel at this stage is permissible only pursuant to a negotiated channel arrangement. Because Paxson wishes to elect a channel unassigned to a local station, it does not anticipate this arrangement to have anti-competitive effects, but the FCC has said it will review stations' elections for such effects. Accordingly, by signing below, [ ] hereby acknowledges the foregoing and confirms the following:

- ☐ [ ] has no objection to the election of Channel 43 by KGPX(TV).
- ☐ [ ] objects to the election of Channel 43 by KGPX(TV) for the following reasons:

This acknowledgement is effective as of the date hereof.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Title (please print)

\_\_\_\_\_  
Date

# Exhibit C



January 18, 2005

William L. Watson  
Secretary  
Paxson Communications Corp  
601 Clearwater Park Road  
West Palm Beach, FL 33401

Dear Mr. Watson:

I recently received your letter asking for a waiver from our company for your use of Channel 43 for KGPX-DT in Spokane. Since our engineers are still evaluation the possible interference situation, we do object to your use of channel 43. Thank you for calling this situation to our attention.

Sincerely,

H. Darrell Blue  
Vice President/General Manager

Certificate of Service

I, Kenneth Wolin, Legal Assistant at the firm of Rini Coran, PC, do certify that I have caused a copy of the foregoing "Comments and Objection of Spokane Television, Inc. and Apple Valley Broadcasting, Inc. to First Round Channel Election of Paxson Spokane License, Inc". to be sent this 15<sup>th</sup> day of March, 2005 via Federal Express to the following parties unless otherwise indicated (\*):

Paxson Spokane License, Inc.  
Licensee of KGPX (TV)  
601 Clearwater Park Road  
West Palm Beach, FL 33401-6233  
Attn: William L. Watson

Washington State University  
Licensee of KWSU-TV  
c/o Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036  
Attn: Margaret L. Miller

Paxson Spokane License, Inc.  
Licensee of KGPX (TV)  
c/o Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036  
Attn: Scott S. Patrick

Pullman Broadcasting, Inc.  
Licensee of KQUP (TV)  
c/o Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Avenue, NW  
Suite 200  
Washington, DC 20036-3101  
Attn: Peter Tannenwald

Mountain Licenses, L.P.  
Licensee of KAYU-TV  
c/o Leventhal Senter & Lerman, PLLC  
2000 K Street, NW  
Suite 600  
Washington, DC 20006-1809  
Attn: John D. Poutasse

Fisher Broadcasting – Washington TV, L.L.C.  
Licensee of KLEW-TV  
c/o Shaw Pittman, LLP  
2300 N Street, NW  
Washington, DC 20037  
Attn: Clifford M. Harrington

King Broadcasting Company  
Licensee of KREM-TV and KGW (TV)  
c/o Wiley Rein & Fielding, LLP  
1776 K Street, NW  
Washington, DC 20006  
Attn: John M. Burgett

State Board of Education, State of Idaho  
Licensee of KUID-TV and KCDT (TV)  
c/o Fletcher, Heald and Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209-3801  
Attn: Anne Goodwin Crump

KHQ, Incorporated.  
Licensee of KHQ-TV  
1201 West Sprague Street  
Spokane, WA 99210-0600  
Attn: Lon Lee – President

Fisher Broadcasting – Portland TV, L.L.C.  
Licensee of KATU (TV)  
c/o Shaw Pittman, LLP  
2300 N Street, NW  
Washington, DC 20037  
Attn: Clifford M. Harrington

Spokane School District #81  
Licensee of KSPS-TV  
c/o Garvey Schubert Baber  
1000 Potomac Street, NW  
5<sup>th</sup> Floor  
Washington, DC 20007  
Attn: John Crigler

National Minority T.V., Inc.  
Licensee of KNMT (TV)  
c/o Law Offices of Colby M. May  
205 Third Street, S.E.  
Washington, DC 20003-1128

Emmis Television License, LLC  
Licensee of KOIN (TV)  
c/o Wiley Rein & Fielding, LLP  
1776 K Street, NW  
Washington, DC 20006  
Attn: John E. Fiorini

North Pacific International Television, Inc.  
Licensee of KHCV (TV)  
c/o Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Avenue, NW  
Suite 200  
Washington, DC 20036-3101  
Attn: Peter Tannenwald

Puget Sound Educational TV, Inc.  
Licensee of KWDK (TV)  
c/o Koerner & Olender, P.C.  
5809 Nicholson Lane  
Suite 124  
North Bethesda, MD 20852  
Attn: Robert L. Olender

KSKN Television, Inc.  
Licensee of KSKN (TV)  
c/o Wiley Rein & Fielding, LLP  
1776 K Street, NW  
Washington, DC 20006  
Attn: John M. Burgett

KCTS Television  
Licensee of KCTS-TV  
c/o Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036  
Attn: Todd D. Gray

Nazifa Sawez \*  
Federal Communications Commission  
Room 2-A726  
445 12<sup>th</sup> Street, SW  
Washington DC 20554

Best Copy and Printing, Inc. \*  
FCC Copy Contractor  
Portals II  
445 12<sup>th</sup> Street, SW  
Room CY-B402  
Washington, DC 20554



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Kenn Wolin

\* By Hand